



June 13, 2002

Ms. Carol Longoria  
Public Information Coordinator  
Office of the General Counsel  
The University of Texas System  
201 West 7<sup>th</sup> Street  
Austin, Texas 78701-2902

OR2002-3216

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164281.

The University of Texas Health Science Center at San Antonio ("UTHSCSA") received a request for the safety investigation report concerning the fire at the Texas Research Guard Station. You claim that the submitted documents are excepted from disclosure under sections 552.111, 552.116, and 552.125 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that the submitted documents are subject to section 552.022 of the Government Code. Section 552.022 provides, in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

Gov't Code § 552.022(a)(1). The documents in Tab 4 are a completed report. The documents in Tab 5 are a completed investigation. Thus, UTHSCSA must release the submitted documents unless they are expressly confidential under other law or are excepted from disclosure by section 552.108. *See id.* § 552.022(a)(1). You claim that the documents in Tab 5 are excepted from disclosure under sections 552.111 and 552.116. We note that

sections 552.111 and 552.116 of the Government Code are discretionary exceptions to disclosure that protect the governmental body's interests and may be waived; as such, those exceptions do not constitute other law that makes information expressly confidential for the purposes of section 552.022(a). *See, e.g.*, Open Records Decision No. 470 at 7 (1987) (governmental body has discretion to release information protected by statutory predecessor to Gov't Code § 552.111). Accordingly, UTHSCSA must release the documents submitted as Tab 5.

On the other hand, you assert that the documents in Tab 4 are confidential under section 552.125 of the Government Code. Section 552.125 of the Government Code excepts from disclosure "[a]ny documents or information privileged under the Texas Environmental, Health, and Safety Audit Privilege Act" (the "Act"). We believe the Act is "other law" for the purposes of section 552.022. The stated purpose of the Act, article 4447cc of Vernon's Texas Civil Statutes, "is to encourage voluntary compliance with environmental and occupational health and safety laws." V.T.C.S. art. 4447cc, § 2. In furtherance of its stated purpose, the Act provides for the confidentiality of environmental or health and safety audits voluntarily performed by or for the owner or operator of a facility that is regulated under an environmental or health and safety law. V.T.C.S. art. 4447cc, §§ 3, 5, 6. The report in Tab 4 was completed by the UTHSCSA Police Department as part of its investigation of the fire at the guard station; it is not an environmental or health and safety audit. Consequently, the report is not excepted from disclosure under section 552.125 and must be released.

In summary, UTHSCSA must release all of the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

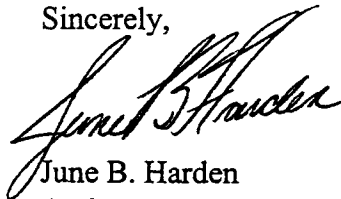
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/JKL/sdk

Ref: ID# 164281

Enc: Submitted documents

c: Mr. Ricardo Roberto Trevino  
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(w/o enclosures)